

SENATE, No. 1891

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

Sponsored by:

Senator NILSA CRUZ-PEREZ

District 5 (Camden and Gloucester)

Senator JAMES BEACH

District 6 (Burlington and Camden)

Co-Sponsored by:

Senator Turner

SYNOPSIS

Provides tax credits to vineyards and wineries for qualified capital expenses.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/5/2020)

1 AN ACT providing tax credits to vineyards and wineries for
2 qualified capital expenses and supplementing Title 54A of the
3 New Jersey Statutes and P.L.1945, c.162 (C.54:10A-1 et seq.).
4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7

8 1. As used in sections 2 through 4 of P.L. , c. (C.)
9 (pending before the Legislature as this bill):

10 “Director” means the Director of the Division of Taxation in the
11 Department of the Treasury.

12 “Qualified capital expense” means any expenditure made by the
13 taxpayer for the purchase and installation of equipment or agricultural
14 materials for use in the production of agricultural products at a
15 vineyard or winery, including:

- 16 a. barrels;
- 17 b. bins;
- 18 c. bottling equipment;
- 19 d. canopy management machines;
- 20 e. capsuling equipment;
- 21 f. chemicals;
- 22 g. corks;
- 23 h. crushers;
- 24 i. deer control fencing;
- 25 j. destemmers;
- 26 k. fermenters or other recognized fermentation devices;
- 27 l. fertilizer and soil amendments;
- 28 m. filters;
- 29 n. fruit harvesters;
- 30 o. fruit plants;
- 31 p. hoses;
- 32 q. irrigation equipment;
- 33 r. labeling equipment;
- 34 s. lugs;
- 35 t. mowers;
- 36 u. poles;
- 37 v. posts;
- 38 w. presses;
- 39 x. pruning equipment;
- 40 y. pumps;
- 41 z. refractometers;
- 42 aa. refrigeration equipment;
- 43 bb. seeders;
- 44 cc. soil;
- 45 dd. small tools;
- 46 ee. tanks;
- 47 ff. tractors;
- 48 gg. vats;

1 hh. weeding and spraying equipment;

2 ii. wine tanks;

3 jj. wire; and

4 kk. any other items as approved by the director in consultation
5 with the Secretary of Agriculture.

6 “Vineyard” means agricultural lands located in the State consisting
7 of at least 1 contiguous acre dedicated to the growing of grapes or
8 other fruit that are used or are intended to be used in the production of
9 wine by a winery as well as any other plants or other improvements
10 located thereon.

11 “Winery” means a commercial farm where the owner or operator
12 of the commercial farm has been issued and is operating in compliance
13 with a plenary winery license or farm winery license pursuant to
14 R.S.33:1-10.

15
16 2. a. For taxable years beginning on or after January 1, 2018, but
17 before January 1, 2028, a taxpayer that is a vineyard or winery shall be
18 allowed a credit against the tax imposed pursuant to the “New Jersey
19 Gross Income Tax Act,” N.J.S.54A:1-1 et seq. in an amount equal to
20 25 percent of the qualified capital expenses made in connection with
21 the establishment of a new vineyard or winery or the capital
22 improvements made to an existing vineyard or winery during each
23 taxable year in which the qualified vineyard or winery is operated for a
24 profit by the taxpayer.

25 b. The total value of the grants of tax credits approved by the
26 director, pursuant to subsection a. of this section and subsection a. of
27 section 6 of P.L. , c. (C.) (pending before the Legislature as this
28 bill), that may be applied against tax liability for a taxable year shall
29 not exceed an aggregate annual limit of \$3,000,000. The total amount
30 of tax credits allowed for a taxpayer by this subsection shall not
31 exceed \$250,000, to be applied for over no more than a period of 10
32 tax years. The amount applied against a tax liability for a taxable year
33 for an individual vineyard or winery may not exceed \$50,000. If the
34 amount of tax credits applied for by taxpayers in a taxable year,
35 pursuant to sections 3 and 7 of P.L. , c. (C.) (pending before the
36 Legislature as this bill), exceeds the aggregate annual limit of
37 \$3,000,000, then a taxpayer who has first applied for and has not been
38 allowed a tax credit amount for that reason shall be allowed, in the
39 order in which they have submitted an application, their approved
40 amount of tax credit on the first day of the next succeeding taxable
41 year in which tax credits are issued pursuant to P.L. , c. (C.)
42 (pending before the Legislature as this bill) and are not in excess of the
43 amount of credits available.

44 c. The amount of credit allowed pursuant to subsection a. of this
45 section shall be taken by the taxpayer to reduce the tax otherwise due
46 and required to be paid for the taxable year to which the credit applies.
47 The amount of credit otherwise allowable pursuant to this section
48 which cannot be applied for the taxable year against the tax liability

1 otherwise due for that taxable year may either be carried over, if
2 necessary, for the 10 taxable years following the taxable year for
3 which the credit was allowed or, at the election of the taxpayer, be
4 claimed as and treated as an overpayment for the purposes of
5 N.J.S.54A:9-7, provided, however, that subsection (f) of that section
6 shall not apply. A credit allowed pursuant to subsection a. of this
7 section shall only be taken by the taxpayer to reduce the tax otherwise
8 due and required to be paid for the taxable year in which the vineyard
9 or winery is conducted or operated for a profit by the taxpayer.

10 d. A vineyard or winery that is classified as a partnership for
11 federal income tax purposes shall not be allowed a credit directly, but
12 the amount of credit of a taxpayer in respect of a distributive share of
13 partnership income shall be determined by allocating to the taxpayer
14 that proportion of the credit acquired by the partnership that is equal to
15 the taxpayer's share, whether distributed, of the total distributive
16 income or gain of the partnership for its taxable year ending within or
17 with the taxpayer's taxable year except as otherwise provided by law.
18 A qualified vineyard or winery that is a New Jersey S Corporation
19 shall not be allowed a credit directly, but the amount of credit of a
20 taxpayer in respect of a pro rata share of S Corporation income shall
21 be determined by allocating to the taxpayer that proportion of the
22 credit acquired by the New Jersey S Corporation that is equal to the
23 taxpayer's share, whether or not distributed, of the total pro rata share
24 of S Corporation income of the New Jersey S Corporation for its
25 privilege period ending within or with the taxpayer's taxable year
26 except as otherwise provided by law.

27
28 3. a. Notwithstanding the provisions of section 2 of
29 P.L. , c. (C.) (pending before the Legislature as this bill) to
30 the contrary, a taxpayer shall not be permitted to take any credits
31 pursuant to section 2 of P.L. , c. (C.) (pending before the
32 Legislature as this bill) to reduce or offset the New Jersey gross
33 income tax liability that is incurred and required to be paid by the
34 taxpayer in connection with the conduct or operation of a vineyard
35 or winery unless the taxpayer has obtained prior written
36 authorization from the director pursuant to this section.

37 b. The director shall establish an application process and
38 prescribe the form and manner through which a taxpayer may make
39 and file an application to obtain the director's written authorization
40 for the allowance of a credit. The application shall, at minimum,
41 require the taxpayer to demonstrate, in a form and manner as shall
42 be prescribed by the director, that the qualified vineyard or winery
43 for which the taxpayer is seeking the director's written
44 authorization for the allowance of a credit is unrelated to the
45 conduct or operation of any other business that was, or is currently,
46 conducted or operated by the taxpayer. If the vineyard or winery
47 and any other business that was, or is currently, conducted or
48 operated by the taxpayer are determined by the director to be related

1 by common ownership, the use of similar business names,
2 trademarks, or service marks, or the conduct of similar business
3 activities or operations, then the taxpayer shall demonstrate that the
4 vineyard or winery was not established or acquired for the purpose
5 of enjoying the benefit of the credit.

6 c. The director shall review each application made and filed by
7 a taxpayer pursuant to subsection b. of this section and make a
8 determination regarding the approval of an application seeking the
9 director's written authorization for the allowance of a credit within
10 90 calendar days of the date a completed application is received.

11 d. The director shall issue a written authorization for the
12 allowance of a credit to each taxpayer that made and filed a
13 complete application that has been reviewed and approved by the
14 director pursuant to subsection c. of this section within five
15 calendar days of the date the director's determination is made.
16 Each taxpayer issued a written authorization for the allowance of a
17 credit shall include a copy of the director's authorization when
18 filing a return that includes a claim for the credit allowed pursuant
19 to section 2 of P.L. , c. (C.) (pending before the Legislature
20 as this bill).

21 e. If the director fails to make a determination regarding the
22 approval of an application seeking the director's written
23 authorization for the allowance of a credit within 90 calendar days
24 of the date a complete application is received, or if the director fails
25 to issue a written authorization for the allowance of a credit within
26 five calendar days of the date the director's determination is made,
27 the application shall be deemed to have been approved and the
28 written authorization shall be deemed to have been issued by the
29 director. Each taxpayer that made and filed a complete application
30 pursuant to subsection b. of this section but fails to receive a
31 determination from the director within 90 calendar days of the date
32 a complete application is received, or fails to receive a written
33 authorization for the allowance of a credit within five calendar days
34 of the date the director's determination is made, shall include a
35 copy of the taxpayer's application when filing a return that includes
36 a claim for the credit pursuant to section 2 of P.L. , c. (C.)
37 (pending before the Legislature as this bill).

38
39 4. Notwithstanding any provisions of the "Administrative
40 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the director
41 may adopt immediately upon filing with the Office of
42 Administrative Law, rules and regulations as the director
43 determines to be necessary to effectuate the purposes of P.L. ,
44 c. (C.) (pending before the Legislature as this bill), which
45 shall be effective for a period not to exceed 360 calendar days
46 following the effective date of P.L. , c. (C.) (pending before
47 the Legislature as this bill) and may thereafter be amended,

1 adopted, or readopted by the director pursuant to the requirements
2 of “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
3 seq.).

4

5 5. As used in sections 6 through 8 of P.L. , c. (C.)
6 (pending before the Legislature as this bill):

7 “Acquiring corporation” means the constituent corporation the
8 stockholders of which own the largest proportion of the total voting
9 power in the surviving or consolidated corporation after the merger or
10 consolidation.

11 “Director” means the Director of the Division of Taxation in the
12 Department of the Treasury.

13 “Qualified capital expense” means any expenditure made by the
14 taxpayer for the purchase and installation of equipment or agricultural
15 materials for use in the production of agricultural products at a
16 vineyard or winery, including:

- 17 a. barrels;
- 18 b. bins;
- 19 c. bottling equipment;
- 20 d. canopy management machines;
- 21 e. capsuling equipment;
- 22 f. chemicals;
- 23 g. corks;
- 24 h. crushers;
- 25 i. deer control fencing;
- 26 j. destemmers;
- 27 k. fermenters or other recognized fermentation devices;
- 28 l. fertilizer and soil amendments;
- 29 m. filters;
- 30 n. fruit harvesters;
- 31 o. fruit plants;
- 32 p. hoses;
- 33 q. irrigation equipment;
- 34 r. labeling equipment;
- 35 s. lugs;
- 36 t. mowers;
- 37 u. poles;
- 38 v. posts;
- 39 w. presses;
- 40 x. pruning equipment;
- 41 y. pumps;
- 42 z. refractometers;
- 43 aa. refrigeration equipment;
- 44 bb. seeders;
- 45 cc. soil;
- 46 dd. small tools;
- 47 ee. tanks;
- 48 ff. tractors;

1 gg. vats;
2 hh. weeding and spraying equipment;
3 ii. wine tanks;
4 jj. wire; and
5 kk. any other items as approved by the director in consultation
6 with the Secretary of Agriculture.

7 “Vineyard” means agricultural lands located in the State consisting
8 of at least 1 contiguous acre dedicated to the growing of grapes or
9 other fruit that are used or are intended to be used in the production of
10 wine by a winery as well as any other plants or other improvements
11 located thereon.

12 “Winery” means a commercial farm where the owner or operator
13 of the commercial farm has been issued and is operating in compliance
14 with a plenary winery license or farm winery license pursuant to
15 R.S.33:1-10.

16
17 6. a. For privilege periods beginning on or after January 1, 2018,
18 but before January 1, 2028, a taxpayer that is a vineyard or winery
19 shall be allowed a credit against the tax imposed pursuant to the
20 “Corporation Business Tax Act,” P.L.1945, c.162 (C.54:10A-1 et seq.)
21 in an amount equal to 25 percent of the qualified capital expenses
22 made in connection with the establishment of a new vineyard or
23 winery or the capital improvements made to an existing vineyard or
24 winery during each privilege period in which the qualified vineyard or
25 winery is operated for a profit by the taxpayer.

26 b. The total value of the grants of tax credits approved by the
27 director, pursuant to subsection a. of this section and subsection a. of
28 section 2 of P.L. , c. (C.) (pending before the Legislature as this
29 bill), that may be applied against tax liability for a privilege period
30 shall not exceed an aggregate annual limit of \$3,000,000. The total
31 amount of tax credits allowed for an individual vineyard or winery
32 shall not exceed \$250,000, to be applied for over no more than a
33 period of 10 privilege periods. The amount applied against a tax
34 liability for a privilege period for an individual vineyard or winery
35 may not exceed \$50,000. If the amount of tax credits applied for by
36 taxpayers, pursuant to sections 3 and 7 of P.L. , c. (C.)
37 (pending before the Legislature as this bill), exceeds the aggregate
38 annual limit of \$3,000,000, then a taxpayer who has first applied for
39 and has not been allowed a tax credit amount for that reason shall be
40 allowed, in the order in which they have submitted an application,
41 their approved amount of tax credit on the first day of the next
42 succeeding privilege period in which tax credits are issued pursuant to
43 P.L. , c. (C.) (pending before the Legislature as this bill) and
44 are not in excess of the amount of credits available.

45 c. The amount of credit allowed pursuant to subsection a. of this
46 section shall be taken by the taxpayer to reduce the tax otherwise due
47 and required to be paid for the privilege period to which the credit
48 applies. A credit allowed pursuant to subsection a. of this section shall

1 only be taken by the taxpayer to reduce the tax otherwise due and
2 required to be paid for the privilege period in which the vineyard or
3 winery is conducted or operated for a profit by the taxpayer.

4 d. The amount of the credit applied pursuant to this section
5 against the tax imposed pursuant to section 5 of P.L.1945, c.162
6 (C.54:10A-5), for a privilege period, when taken together with any
7 other credits allowed against the tax imposed pursuant to section 5 of
8 P.L.1945, c.162 (C.54:10A-5) shall not reduce the tax liability of a
9 taxpayer for a privilege period to an amount less than the statutory
10 minimum provided in subsection (e) of section 5 of P.L.1945, c.162
11 (C.54:10A-5). Except as provided in subsection e. of this section, the
12 amount of credit otherwise allowable under this section which cannot
13 be used to reduce the taxpayer's corporation business tax liability for
14 the privilege period may either be carried over, if necessary, for the 10
15 privilege periods following the privilege period for which the credit
16 was allowed or, at the election of the taxpayer, be claimed as and
17 treated as an overpayment for the purposes of R.S.54:49-15, provided,
18 however, that section 7 of P.L.1992, c.175 (C.54:49-15.1) shall not
19 apply.

20 e. A taxpayer may not carry over any amount of credit allowed
21 under subsection a. of this section to a privilege period during which a
22 corporate acquisition with respect to which the taxpayer was a target
23 corporation occurred or during which the taxpayer was a party to a
24 merger or a consolidation, or to any subsequent privilege period, if the
25 credit was allowed for a privilege period prior to the year of
26 acquisition, merger, or consolidation, except that if in the case of a
27 corporate merger or corporate consolidation, the taxpayer can
28 demonstrate, through the submission of a copy of the plan of merger or
29 consolidation and any other evidence that may be required by the
30 director, the identity of the constituent corporation which was the
31 acquiring corporation, a credit allowed to the acquiring person may be
32 carried over by the taxpayer.

33
34 7. a. Notwithstanding the provisions of section 6 of
35 P.L. , c. (C.) (pending before the Legislature as this bill) to
36 the contrary, a taxpayer shall not be permitted to take any credits
37 pursuant to section 6 of P.L. , c. (C.) (pending before the
38 Legislature as this bill) to reduce or offset the New Jersey
39 corporation tax liability that is incurred and required to be paid by
40 the taxpayer in connection with the conduct or operation of a
41 vineyard or winery unless the taxpayer has obtained prior written
42 authorization from the director pursuant to this section.

43 b. The director shall establish an application process and
44 prescribe the form and manner through which a taxpayer may make
45 and file an application to obtain the director's written authorization
46 for the allowance of a credit. The application shall, at minimum,
47 require the taxpayer to demonstrate, in a form and manner as shall
48 be prescribed by the director, that the qualified vineyard or winery

1 for which the taxpayer is seeking the director's written
2 authorization for the allowance of a credit is unrelated to the
3 conduct or operation of any other business that was, or is currently,
4 conducted or operated by the taxpayer. If the vineyard or winery
5 and any other business that was, or is currently, conducted or
6 operated by the taxpayer are determined by the director to be related
7 by common ownership, the use of similar business names,
8 trademarks, or service marks, or the conduct of similar business
9 activities or operations, then the taxpayer shall demonstrate that the
10 vineyard or winery was not established or acquired for the purpose
11 of enjoying the benefit of the credit.

12 c. The director shall review each application made and filed by
13 a taxpayer pursuant to subsection b. of this section and make a
14 determination regarding the approval of an application seeking the
15 director's written authorization for the allowance of a credit within
16 90 calendar days of the date a completed application is received.

17 d. The director shall issue a written authorization for the
18 allowance of a credit to each taxpayer that made and filed a
19 complete application that has been reviewed and approved by the
20 director pursuant to subsection c. of this section within five
21 calendar days of the date the director's determination is made.
22 Each taxpayer issued a written authorization for the allowance of a
23 credit shall include a copy of the director's authorization when
24 filing a return that includes a claim for the credit allowed pursuant
25 to section 6 of P.L. , c. (C.) (pending before the Legislature
26 as this bill).

27 e. If the director fails to make a determination regarding the
28 approval of an application seeking the director's written
29 authorization for the allowance of a credit within 90 calendar days
30 of the date a complete application is received, or if the director fails
31 to issue a written authorization for the allowance of a credit within
32 five calendar days of the date the director's determination is made,
33 the application shall be deemed to have been approved and the
34 written authorization shall be deemed to have been issued by the
35 director. Each taxpayer that made and filed a complete application
36 pursuant to subsection b. of this section but fails to receive a
37 determination from the director within 90 calendar days of the date
38 a complete application is received, or fails to receive a written
39 authorization for the allowance of a credit within five calendar days
40 of the date the director's determination is made, shall include a
41 copy of the taxpayer's application when filing a return that includes
42 a claim for the credit pursuant to section 6 of P.L. , c. (C.)
43 (pending before the Legislature as this bill).

44

45 8. Notwithstanding any provisions of the "Administrative
46 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the director
47 may adopt immediately upon filing with the Office of
48 Administrative Law, rules and regulations as the director

1 determines to be necessary to effectuate the purposes of P.L. ,
2 c. (C.) (pending before the Legislature as this bill), which
3 shall be effective for a period not to exceed 360 calendar days
4 following the effective date of P.L. , c. (C.) (pending before
5 the Legislature as this bill) and may thereafter be amended,
6 adopted, or readopted by the director pursuant to the requirements
7 of “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et
8 seq.).

9
10 9. This act shall take effect immediately.

11
12
13 STATEMENT

14
15 This bill provides credits against the New Jersey gross income tax
16 and corporation business tax, as applicable, to vineyards and wineries
17 for qualified capital expenses, as defined in the bill, in an amount
18 equal to 25 percent of the qualified capital expenses made in
19 connection with the establishment of a new vineyard or winery or the
20 capital improvements made to an existing vineyard or winery during
21 each taxable year or privilege period in which the qualified vineyard or
22 winery is operated for a profit by the taxpayer.

23 Under the bill, a “qualified capital expense” means all expenditures
24 made by the taxpayer for the purchase and installation of equipment or
25 agricultural materials for use in the production of agricultural products
26 at a vineyard or winery, but not for use on preserved farmland,
27 including, examples of which are provided in the bill.

28 The amount of credit allowed is to be taken by the taxpayer to
29 reduce the tax otherwise due and required to be paid for the taxable
30 year to which the credit applies. A credit is only to be taken by the
31 taxpayer to reduce the tax otherwise due and required to be paid for
32 the taxable year in which the vineyard or winery is conducted or
33 operated for a profit by the taxpayer.

34 The bill would provide that the total value of the grants of tax
35 credits approved by the Director of Taxation (director) that may be
36 applied against a gross income and corporation tax liability for a
37 privilege period shall not exceed an aggregate annual limit of
38 \$3,000,000. Each gross income taxpayer or individual vineyard or
39 winery paying corporation business tax would be allowed a total of
40 \$250,000 in tax credits to be taken over a 10 year period, and no more
41 than \$50,000 per tax year or privilege period, as applicable. If the
42 amount of tax credits applied for by taxpayers exceeds the aggregate
43 annual limit of \$3,000,000, then a taxpayer who has first applied for
44 and has not been allowed a tax credit amount for that reason would
45 then be allowed, in the order in which they have submitted an
46 application, their approved amount of tax credit on the first day of the
47 next succeeding privilege period in which tax credits are issued and
48 are not in excess of the amount of credits available.

1 The bill permits a taxpayer, who is allowed a gross income tax
2 credit pursuant to the bill but whose gross income tax liability in the
3 taxable year in which the credit is received is less than the amount of
4 the credit, to either:

5 1) carry forward the unapplied portion of the credit and apply the
6 credit to the gross income tax liability of the taxpayer in the next 10
7 taxable years; or

8 2) receive the unapplied portion of the credit as a refund.

9 The bill provides that a taxpayer who is allowed a corporation
10 business tax credit pursuant to the bill may not reduce the taxpayer's
11 corporation business tax liability in a privilege period to an amount
12 less than the applicable statutory minimum provided in subsection (e)
13 of section 5 of P.L.1945, c.162 (C.54:10A-5).

14 Under the bill, a taxpayer is not to be permitted to take any credits
15 to reduce or offset the New Jersey gross income tax liability or
16 corporation tax liability that is incurred and required to be paid by the
17 taxpayer in connection with the conduct or operation of a vineyard or
18 winery unless the taxpayer has obtained prior written authorization
19 from the director. The director is to establish an application process
20 and prescribe the form and manner through which a taxpayer may
21 make and file an application to obtain the director's written
22 authorization for the allowance of a credit.

23 Under the bill, the director is to review each application made and
24 filed by a taxpayer and make a determination regarding the approval of
25 an application seeking the director's written authorization for the
26 allowance of accredit within 90 calendar days of the date a complete
27 application is received. The director is to issue a written authorization
28 for the allowance of a credit to each taxpayer that made and filed a
29 complete application that has been reviewed and approved by the
30 director within five calendar days of the date the director's
31 determination is made. Each taxpayer issued a written authorization
32 for the allowance of a credit is to include a copy of the director's
33 authorization when filing a return that includes a claim for the credit.
34 If the director fails to make a determination regarding the approval of
35 an application seeking the director's written authorization for the
36 allowance of a credit within 90 calendar days of the date a complete
37 application is received, or if the director fails to issue a written
38 authorization for the allowance of a credit within five calendar days of
39 the date the director's determination is made, the application is to be
40 deemed to have been approved and the written authorization is to be
41 deemed to have been issued by the director. Each taxpayer that made
42 and filed a complete application but fails to receive a determination
43 from the director is to include a copy of the taxpayer's application
44 when filing a return that includes a claim for the credit allowed.